

Frequently Asked Questions – Dodd-Frank Financial Reform Bill (HR 4173)

On July 21, President Obama signed H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act, into law, ushering in a rewrite of the rules governing financial service providers and products and ending a nearly year-long struggle to enact meaningful reforms.

Federal regulators will now be tasked with implementing the 2,300-page bill. The new rules will regulate complex derivatives, set up controls to identify and shut down troubled financial companies, and establish an independent consumer bureau within the Federal Reserve to protect borrowers against abuses in mortgage, credit card and other types of lending.

While the regulatory reform bill is notable for its reforms to Wall Street and government regulatory oversight, the legislation includes the first modernization of real estate appraisal regulations in more than 20 years. In addition to authorizing grant funding for state oversight and enforcement, H.R. 4173 will require that “reasonable and customary” fees be paid to appraisers to reflect what an appraiser would typically earn for an assignment absent the involvement of an appraisal management company. AMCs that violate “customary and reasonable” requirements will be subject to severe penalties under the Truth in Lending Act.

The scope and substance of the new law raises many questions and poses many issues for the appraisal profession. Attached below are Frequently Asked Questions that the Appraisal Institute will update periodically during the course of the upcoming rulemaking process.

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Frequently Asked Questions (Updated September 1, 2010)

General Background

Where can I find more information about the Dodd-Frank Act?

The Appraisal Institute conducted a free-for-members webinar that provides a comprehensive summary of the significant appraisal provisions of the bill. This webinar can be found [here](#) under “Financial Reform Legislation – Appraisal and Real Estate Impacts.” Additional information can be found on the House Financial Services Committee website, including a bill summary, section-by-section analysis and full bill text.

What laws are amended in Dodd-Frank that impact real estate appraisers?

H.R. 4173 amends several federal laws, including the Truth in Lending Act (TILA), Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), the Real Estate Settlement Procedures Act (RESPA), and the Equal Credit Opportunity Act (ECOA).

Truth in Lending Act Requirements

How does TILA relate to real estate appraisals?

The Truth in Lending Act (TILA) is intended to protect consumers from “unfair and deceptive” practices. In 2008, TILA was amended by the Federal Reserve to prohibit coercion of real estate appraisers by lenders, brokers and their agents. The Appraisal Institute held a webinar on the Regulation Z appraisal independence rules in 2008, which can be found [here](#).

Title XIV of Dodd-Frank amends TILA to codify a broad appraiser independence standard that includes payment of customary and reasonable fees to appraisers and significant penalties for non-compliance.

What is an Interim Final Rule?

An Interim Final Rule is a final rule that has the full force and effect of law. Affected parties have an obligation to comply with its requirements.

Which agency is implementing the Interim Final Rule on TILA appraisal independence/customary and reasonable fee requirements?

The Federal Reserve Board is tasked with promulgating the appraisal independence and “customary and reasonable” fee provisions found in Dodd-Frank. The Division of Consumer and Community Affairs promulgated the previous appraisal amendments to TILA in 2008, and it will likely take the lead within the Federal Reserve in developing the Interim Final Rule.

When will the Interim Final Rule expected to be released?

According to H.R. 4173, the Federal Reserve Board must prescribe the Interim Final Rule no later than 90 days after enactment of the bill. The bill was enacted on July 21, 2010, so the Rule is expected by October 19.

What will happen to TILA once the Interim Final Rule is developed?

Dodd-Frank establishes a new Consumer Financial Protection Bureau (CFPB), housed within the Federal Reserve. The CFPB will oversee TILA and RESPA and other consumer protection statutes once the Bureau is fully operational, which is expected to take 18 months.

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Who Will Enforce the TILA-Appraiser Independence requirements?

The new CFPB will enforce TILA, RESPA and other consumer protection statutes, including the appraiser independence requirements.

Can the TILA-Appraisal Independence provisions also be enforced by state attorneys general?

Yes, Section 1422 of the Dodd-Frank Act gives explicit authority to state attorneys general to enforce appraiser independence requirements (Sec. 129E), including the provisions relating to customary and reasonable fees.

When are Lenders and Agents (AMCs) required to pay Appraisers “customary and reasonable” fees?

The “customary and reasonable” fee provision, which is now part of TILA, will be in effect as of October 19, 2010.

What are the penalties for violating the new Truth in Lending Act provisions created by the Dodd-Frank Act?**Who will be responsible for enforcing these provisions?**

The penalties for violations of Sec. 129E are fines of up to \$10,000 for each day any violation occurs (for a first offense), and up to \$20,000 for each day that a violation occurs (for subsequent violations). For instance, if it is determined that a lender or their agent (i.e., an AMC) has failed to pay an appraiser a customary and reasonable fee for 200 assignments, then the AMC may be charged with a single, first offense and could be subject to a civil penalty of up to \$2 million (based upon 1 assignment per day). However, if the same AMC subsequently does not pay another appraiser a customary and reasonable fee for 300 assignments, then the AMC could be charged, as a subsequent offender and could be fined up to \$6 million. Because the provisions of section 129E are part of the Truth in Lending Act, they can be enforced by the new Consumer Financial Protection Bureau or a state attorney general.

If an appraiser accepts an appraisal assignment from an AMC that includes a statement of acceptance that the fee is customary and reasonable, will this be considered customary and reasonable under Dodd-Frank?

The Truth in Lending Act defines “unfair and deceptive” practices. Under Dodd-Frank, failure to pay an appraiser a customary and reasonable fee may constitute a violation of TILA. As such, it is possible that conditioning acceptance of an appraisal on accepting a fee as “customary and reasonable” may be considered unfair and deceptive by the Federal Reserve. It is our hope that the Interim Final Rule will address this issue.

Further, Dodd-Frank states that evidence for customary and reasonable fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies. As such, assignments from AMCs would not appear to be considered evidence of customary and reasonable fees.

Do any government agencies publish fee schedules that might illustrate customary and reasonable fees as defined by Dodd-Frank?

Yes, the U.S. Department of Veterans Affairs Regional Loan Centers is an example of a fee schedule published by a government agency. The Veterans Affairs Regional Loan Centers publish fee schedules for the VA Fee Panel in all 50 states, the District of Columbia, and all U.S. Territories. These schedules are updated periodically, sometimes twice a year. Schedules can be found at the following links:

Denver Regional Loan Center, available [here](#)
Houston Regional Loan Center, available [here](#)
St. Paul Regional Loan Center, available [here](#)
Cleveland Regional Loan Center, available [here](#)

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Roanoke Regional Loan Center, available [here](#)
Manchester Regional Loan Center, available [here](#)
St. Petersburg Regional Loan Center, available [here](#)

Is the Appraisal Institute planning to develop a survey or study that would address the definition of customary and reasonable under the Dodd-Frank Act?

The Appraisal Institute Board of Directors has approved development and release of a “Request for Proposal” from interested parties and the academic community to develop an independent study or survey that would address the requirements of the Dodd-Frank Act, garner industry support and adhere to generally accepted research standards. This RFP is expected to be released shortly.

What will happen to the HVCC after the interim final rule is released?

Upon release of the interim final rule, the Home Valuation Code of Conduct shall have no “force or effect”. However, Dodd-Frank grants authority to various agencies, including the Federal Housing Finance Agency, to issue interpretive guidance. As such, Fannie Mae and Freddie Mac will likely continue to feature prominent provisions from the HVCC in their seller servicing guides.

Title XI of FIRREA Requirements

By what date must states enact AMC registration and supervision laws?

The law states that no AMC may perform services related to a federally related transaction in a state 36 months after the date on which the final regulations containing the minimum requirements that must be contained in state AMC laws are promulgated by the federal bank regulators and the CFPB. It is likely that it will be at least one year before the regulations are issued. Therefore, it is probable that states will have until at least 2014 to enact state AMC laws. Further, the law allows the Appraisal Subcommittee to grant a state an additional twelve months to comply with the requirement to enact an AMC registration and supervisory law if the state shows that they have made substantial progress toward enacting a law that appears to conform to the federal law.

What must be contained in those laws?

The Dodd-Frank Act requires that the federal bank regulators and the CFPB jointly issue regulations that outline the minimum requirements to be applied by a state in the registration of AMCs. At a minimum, state AMC laws must: 1) require that AMCs register with and be subject to supervision by the state appraiser licensing and certification entity; 2) require that AMCs verify that they only utilize licensed or certified appraisers for federally related transactions; 3) require that appraisal coordinated by the AMC comply with USPAP; and 4) require that appraisals are performed independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards that will be established under TILA.

What is the definition of an appraisal management company?

Under the Dodd-Frank Act, an appraisal management company is defined as any external third party with more than 15 appraisers in one state, or more than 25 nationwide, that is authorized by a creditor in a consumer credit transaction that is secured by a consumer’s principal dwelling that: 1) recruits, retains or selects appraisers; 2) contracts with appraisers to perform appraisal assignments; 3) manages the process of having an appraisal performed; or 4) reviews and verifies the work of appraisers.

What will be the role of the Appraisal Subcommittee as it relates to AMCs?

The Dodd-Frank Act states that, in addition to monitoring state requirements for the licensing and certification of appraisers, that the Appraisal Subcommittee shall also monitor the requirements established by states for the

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registration and supervision of the operations and activities of AMCs. The ASC is also required to maintain a national registry of AMCs that are either registered with, and subject to the supervision of, a state appraiser board or are operating subsidiaries of federally regulated institutions. The ASC will also be the agency that will collect the \$25 per appraiser registry fee. Lastly, the ASC will be charged with making grants to state appraiser boards to support their efforts to comply with requirements regarding the submission of data on AMCs to the national registry.

Are states permitted to go beyond the minimum requirements that are contained in the federal law and to enact additional registration and supervision requirements?

Yes, states are permitted to enact additional requirements regarding the registration and supervision of AMCs.

Doesn't the Dodd Frank Bill create a federal system of regulation of AMCs?

No. The Dodd-Frank Act requires that states enact AMC registration and supervision laws that comply with the minimum requirements. The Dodd-Frank Act does, however, create an exemption from state registration requirements for AMCs that are owned and controlled by federally regulated institutions. This exemption is from the registration requirements ONLY. These institutions must still comply with any and all additional requirements that are imposed by states.

Which AMCs are exempt from state AMC registration laws? Which parts of the state AMC laws are these AMC exempt from?

According to our estimates, there are very few AMCs that will be exempt from state AMC registration laws. In order to satisfy the requirement that an AMC be "owned and controlled" by a federally regulated institution in order to be exempt from the registration requirements, an AMC must be at least 25% owned by a federally regulated institution, and the institution must exert some control over the day to day operations of the AMC.

Can clients consider appraisal designations in the appraiser hiring process?

Yes. H.R. 4173 specifically states:

"Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria."

H.R. 4173 also clarifies additional components for qualifications beyond State certification, specifically:

"Criteria established by the Federal financial institutions regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation...for appraiser qualifications in addition to State certification or licensing may include education achieved, experience, sample appraisals, and references from prior clients."

Does H.R. 4173 ban Broker Price Opinions (BPOs)?

H.R. 4173 prohibits BPOs being used as the primary basis to determine the value of a piece of property for the purpose of loan origination in conjunction with the purchase of a consumer's principal dwelling. The provision is intended to codify GSE policies that prohibit the use of BPOs in mortgage loan origination.

Who is developing the quality control standards for AVMs?

Under Dodd-Frank, the AVM quality control standards will be promulgated by the federal bank regulatory agencies, the Appraisal Subcommittee and the Appraisal Standards Board.

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How much grant money will be available to state appraisal boards to assist with enforcement?

Initial estimates indicate that as much as \$1.5 million may be available, but this figure is subject to budget considerations and the rulemaking process that will establish the actual amount paid by AMCs to the Appraisal Subcommittee in the form of registry fees.

What are the new appraisal requirements for “higher risk mortgages”?

Under the Dodd-Frank Act, a written appraisal will be required for all “higher risk mortgages”. The appraisal must be performed by a licensed or certified appraiser, and must include a physical property visit. Currently, appraisals are not required under federal law for residential mortgage loans below the \$250,000 *de minimis* threshold. In effect, this provision of the Dodd-Frank Act will classify all “higher risk mortgages” as federally related transactions for which appraisals are required. If the “higher risk mortgage” is being used to finance the purchase of a property that was purchased by the seller within the previous 180 days prior to the current sale, a second appraisal which includes an analysis of the differences in the sales price, changes in market conditions, and any improvement that have been made to the property must be ordered by the creditor at no cost to the borrower. The one caveat to the new requirements is that the Dodd-Frank Act permits the federal bank regulators to exempt a “class of loans” from these appraisal requirements if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

Other Issues Relating to the Dodd-Frank Act

Will the Dodd-Frank Act result in a recalculation of the *de minimis* level for federally related transactions?

Not necessarily. The Dodd-Frank Act only requires that the CFPB evaluate the *de minimis* to ensure that it provides reasonable protection for consumer who purchase 1-4 family single family dwellings.

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Do any federal requirements require lenders to use AMCs?

No, use of AMCs is not required under Dodd-Frank or any pre-existing appraisal requirement. Lenders may engage appraisers directly without the use of third parties.

Can lenders achieve appraisal independence compliance without outsourcing the appraisal function?

Yes, lenders may achieve compliance with Dodd-Frank or any pre-existing appraisal independence requirement by establishing meaningful risk management practices, including separation between risk management (appraisal) and loan production.

Can lenders maintain the appraisal function internally (as an in-house operation), without loan production involvement under Dodd-Frank or any pre-existing appraisal requirement?

Yes, there are several ways in which sellers may staff appraisal functions internally without outsourcing the function to a third party, so long as they maintain separation between risk management functions and loan production staff. To achieve compliance the appraisal function should report to an individual or department outside

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of loan production. Some examples of eligible individuals or entities within institutions include, but are not limited to, the:

- risk management department
- credit department
- consumer lending department (with no loan production responsibilities)
- compliance office, or
- chief executive office.

Whether the appraisal function is a fully staffed appraisal department or an individual assigned with the appraisal responsibility, the function can be maintained internally where the reporting line is to someone other than loan production (e.g., any of the entities listed above). Lenders also should make sure that their policies are in compliance with any applicable federal bank regulatory policies by contacting their appropriate bank regulatory agency.

Does Dodd-Frank or any pre-existing appraisal requirement require lenders or AMCs utilize rotational panels in making appraisal assignments.

No, Dodd-Frank nor any other pre-existing appraisal requirements require the use of a rotational list of approved appraisers by lenders and AMCs. Appraisers should not be selected for an assignment just because they are “next on the list.” Further, lenders are under no obligation to expand the number of appraisers on their appraiser panels as a result of these requirements.

Instead, lenders and AMCs should select the appraiser on their panel that is most qualified and competent to complete the specific assignment. According to Freddie Mac Bulletin 2009-18, “Appraisers must be familiar with the local market in which the property is located, must be competent to appraise the subject property, and must have access to the data sources necessary to develop a credible appraisal.” The Freddie Mac Bulletin further states that “Some markets or properties may require that the appraiser have access to non-traditional data sources in order to provide the Seller with a credible appraisal. In such cases, the Seller should ensure that the appraiser has access to the necessary market data to support any conclusions about the market.” Lastly, Freddie Mac states that “Sellers should consider membership in a professional appraisal organization as a qualification criterion,” but that it should not be the only factor used in selecting an appraiser for an assignment.

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